

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the Matter of )  
 )  
Protecting the Privacy of Customers of )  
Broadband and Other Telecommunications ) WC Docket No. 16-106  
Services )

Comments of  
Thomas A. Schatz  
President  
Citizens Against Government Waste  
In Support of the Petitions for Reconsideration

March 3, 2017

Citizens Against Government Waste (CAGW) is a private, nonprofit, nonpartisan organization dedicated to educating the American public about waste, mismanagement, and inefficiency in government. On behalf of the more than 1.2 million members and supporters of CAGW, I offer the following comments in support of the 11 separate Petitions for Reconsideration of the FCC Order in the Matter of Protecting the Privacy of Customers of Broadband and Other Telecommunications Services (WC Docket No. 16-106) (Privacy Order), filed on January 3, 2017.

When the Federal Communications Commission (FCC) approved the Open Internet Order on February 26, 2015, and reclassified internet service providers (ISPs) as Title II common carriers, the agency disrupted the comprehensive privacy protection framework at the federal level for internet users, including ISP customers.<sup>1</sup> Previously, such privacy was protected uniformly by the Federal Trade Commission (FTC) under Section 5 of the Federal Trade Commission Act, which prohibits unfair or deceptive practices in the marketplace.<sup>2</sup>

Rather than harmonizing the data privacy protections across the federal government with those offered under the authority of the FTC, on October 27, 2016, the FCC approved by a party-line vote an extremely restrictive set of rules governing data privacy only for broadband internet providers. These rules created complex and confusing technical criteria for consumers, and onerous reporting requirements for ISPs.

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<sup>1</sup> Protecting and Promoting the Open Internet, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, Federal Communications Commission, Adopted: February 26, 2015, Released: March 12, 2015, [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-15-24A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A1.pdf).

<sup>2</sup> Privacy and Data Security Update (2015), Federal Trade Commission, January 2016, <https://www.ftc.gov/reports/privacy-data-security-update-2015>.

The Joint Petition for a Stay, filed on January 27, 2017, noted that the reconciliation was necessary “in order to undo the *Order*’s dramatic departures from the FTC’s privacy framework, which effectively balances the twin objectives of providing consumers control over their personal information while preserving opportunities for beneficial uses of data that lead to innovation, new products and capabilities, customized services, and growth in the digital economy.”<sup>3</sup>

As noted by CAGW in its previous comments to the FCC regarding this matter, the Privacy Order imposes a highly prescriptive privacy regime on ISPs, including requiring them to obtain opt-in consent from consumers for the use of a broad range of data for marketing purposes and other typical online practices for which consent is normally assumed. Compliance with the customer consent requirements places an onerous burden on broadband providers through increased overhead and customer service costs. These restrictive rules will decrease ISPs’ flexibility to adapt to changing technologies and adversely impact innovation and development of new business models and services for the benefit of consumers on the internet. The standards being imposed on ISPs do not apply to other entities doing business over the internet, including content distribution network (CDNs), which are subject to the FTC’s privacy rules.

The United States is at a critical juncture in modernizing its telecommunications technology. If these rules are allowed to continue, they could force ISPs to spend an inordinate amount of time and resources on consumer privacy issues, drawing resources away from other areas such as core infrastructure improvements, preparation for the deployment of fifth generation (5G) technological innovations, and improvements to customer service. As noted in the Joint Petition, the Privacy Order failed “to undertake any analysis of whether the economic and consumer welfare costs of the rules’ constraints on beneficial uses of data outweigh the benefits, if any, associated with such restrictions.”<sup>4</sup>

The lack of a cost/benefit analysis before the Privacy Order was approved demonstrates a serious flaw in the regulatory process at the FCC, which must be addressed by the commission. Without an economic analysis, it is difficult to weigh the true cost of regulation on providers of services and consumers. The FCC should harmonize its privacy rules with the FTC in order to create a technology neutral, level playing field approach to privacy that ensures consistency for the commercial use of consumer data. The first step toward achieving this objective is to reconsider the FCC’s Privacy Order, as requested in the 11 Petitions for Reconsideration.

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<sup>3</sup> In the Matter of Protecting the Privacy of Customers of Broadband and Other Telecommunications Services, WC Docket No. 16-106, Joint Petition for Stay, Federal Communications Commission, filed January 27, 2017, <https://ecfsapi.fcc.gov/file/101270254521574/012717%20Petition%20for%20Stay.pdf>.

<sup>4</sup> Ibid.